NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOYCE PETERSON, Plaintiff - Appellant, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant - Appellee.	No. 04-16686 D.C. No. CV-03-1404-MJJ MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Argued and Submitted June 14, 2006
San Francisco, California

Before: HUG and O'SCANNLAIN, Circuit Judges, and MILLER[**], District Judge.

Joyce Peterson is appealing the district court's decision affirming the Social Security Commissioner's ruling that she is not entitled to disability benefits under

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Jeffrey T. Miller, United States District Judge for the Southern District of California, sitting by designation.

42 U.S.C. § 401, et seq. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.[1]

A district court's order affirming the ALJ's decision to deny benefits is reviewed de novo. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). "The Commissioner's decision to deny benefits will be overturned 'only if it is not supported by substantial evidence or is based on legal error.'" *Morgan v. Commissioner*, 169 F.3d 595, 599 (9th Cir. 1999) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)). Substantial evidence is "more than a mere scintilla, but may be less than a preponderance." *Lewis v. Apfel*, 236 F.3d 503, 509 (9th Cir. 2001). Any relevant evidence that "a reasonable mind might accept as adequate to support a conclusion" may constitute substantial evidence. *Magallanes*, 881 F.2d at 750. If there is more than one reasonable interpretation of the evidence before the Commissioner, the court must affirm the Commissioner's interpretation of the evidence. *Sandgathe*, 108 F.3d at 980.

The Administrative Law Judge's ("ALJ") determination that Ms. Peterson's subjective complaints were not fully credible was supported by clear and convincing reasons. *See Vertigan v. Halter*, 260 F.3d 1044, 1049-50 (9th Cir.

[1]Ms. Peterson's appeal raised several issues, some of which were not raised in the district court. Those arguments not presented to the district court are waived. *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (per curiam).

2001). The treating physician, Dr. Bonneau, and the consulting physician, Dr. Rosenoer, both opined that Ms. Peterson could perform sedentary work and, accordingly, could walk for up to two hours in an eight-hour workday. Ms. Peterson did not testify or report that any of her medications caused adverse side effects. The ALJ further noted that Ms. Peterson engaged in daily activities such as shopping, driving, traveling, and Bible study, and that she had not seen her primary physician in months. The ALJ also properly discounted the opinion of Dr. Kaur because Dr. Kaur's conclusions were not supported by an assessment of Ms. Peterson's functional limitations. *See Thomas*, 278 F.3d at 957 ("The ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.").

It was not legal error for the ALJ not to consider Ms. Peterson's obesity. There was no evidence in the record, nor any contention made at the hearing, that Ms. Peterson's obesity affected any of her other impairments such that in combination she suffered from an impairment equal to a listed impairment. *See Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). Similarly, Ms. Peterson failed to present any evidence that her claimed impairments collectively equaled the severity of a listed impairment. *See id.* at 683.

The ALJ also did not err in not considering a closed period of disability from July 1999 to January 2001 because he found that Ms. Peterson had not been under a disability at any time prior to the date of his decision.

Finally, the ALJ's finding that Ms. Peterson's past relevant work was performed at the sedentary exertional level, and that Ms. Peterson is capable of returning to that work, is consistent with the vocational expert's testimony and supported by the record as a whole. First, the vocational expert testified that Ms. Peterson's job was defined as sedentary in the Dictionary of Occupational Titles. Second, while the vocational expert stated that a college administrative position could require more than sedentary exertion, the transcript of the hearing indicates that he also accepted the ALJ's observation that Ms. Peterson's position at the Culinary Institute would not require such extensive activity. Third, the vocational expert testified that Ms. Peterson would be required to walk "much more" than 45 minutes to one hour per day, which is still consistent with sedentary work. Finally, Mr. Peterson testified that Ms. Peterson walked for exercise and was able to walk for 15 to 20 minutes at a time. Taken together, this evidence supports a finding that Ms. Peterson has the capacity to walk as much as her past work required.

Accordingly, the decision of the district court is

AFFIRMED.